

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE MAY 9, 2005

AMENDED IN SENATE APRIL 21, 2005

AMENDED IN SENATE APRIL 18, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 926

Introduced by Senators Florez and Perata
(Principal coauthors: Senators Escutia and Migden)
(Principal coauthor: ~~Assembly Member McCarthy~~ coauthors:
Assembly Members McCarthy and Parra)

February 22, 2005

An act to add Section 40065 to the Public Resources Code, *and to amend and renumber Section 13274 of the Water Code*, relating to sewage sludge.

LEGISLATIVE COUNSEL'S DIGEST

SB 926, as amended, Florez. Sewage sludge management.

Existing law, the California Integrated Waste Management Act of 1989, imposes requirements with respect to solid waste management and solid waste disposal facilities. That act defines solid waste to include dewatered, treated, and chemically fixed sewage sludge that is not a hazardous waste. Existing law, the Porter-Cologne Water Quality Control Act, requires the State Water Resources Control Board or the California regional water quality control boards to prescribe general waste discharge requirements for agronomic applications of that sludge and the use of that sludge as a soil amendment or fertilizer. Existing law also regulates agricultural products derived from municipal sewage sludge as a fertilizer.

This bill would specify that those provisions of the Porter-Cologne Water Quality Control Act do not prohibit the Kern County Board of Supervisors, upon a majority vote, from adopting an ordinance that would regulate or prohibit the ~~importation~~ *land application* of sewage sludge ~~from another California county for application to land in the unincorporated areas of Kern County.~~ The bill would require such a prohibition, if enacted, to exempt a ~~contractual obligation to import sewage sludge for land application that was in existence permitted by a state or local entity before the effective date of the prohibition.~~ The bill would provide that the exemption would not apply to any renewal of a ~~contractual obligation to import sewage sludge for preexisting permit that directly regulates the land application of biosolids when the renewal occurs after the effective date of the prohibition.~~ The bill would make legislative findings and declarations regarding the inapplicability of a general statute within the meaning of Section 16 of Article IV of the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) All sewage treatment produces biosolids, which are also
- 4 known as treated sewage sludge. Many municipalities ~~desire to~~
- 5 ~~reuse the biosolids despite the fact that biosolids can also contain~~
- 6 *reuse biosolids on agricultural lands, rather than dispose of*
- 7 *biosolids in landfills or through other disposal methods.*
- 8 *Biosolids, in most cases, contain trace concentrations of heavy*
- 9 *metals, pathogens, synthetic organic compounds, and other*
- 10 *pollutants.*
- 11 (b) *Because of local concerns and perceptions about the*
- 12 *potential risks associated with biosolids land application,*
- 13 *ongoing research about biosolids by federal and state agencies is*
- 14 *necessary to inform the public regarding the safety of biosolids*
- 15 *land application and to ensure the protection of groundwater*
- 16 *resources and public health. Kern County may have special*
- 17 *concerns about the risks to the environment and public health,*
- 18 *and may desire to adopt regulations for biosolids land*
- 19 *application that go beyond state and federal standards. State law*

1 *does not preclude a local government agency from regulating the*
2 *application of sewage sludge to land within its jurisdiction.*

3 ~~(b) Not only have there been no safety standards established~~
4 ~~for the vast majority of pollutants found in biosolids, but federal~~
5 ~~and state regulations also do not require biosolids to even be~~
6 ~~tested for the presence of these pollutants. As a result, there is~~
7 ~~incredible uncertainty that public health is being protected. In~~
8 ~~fact, various cases of sickness from burning eyes and lungs to~~
9 ~~gastrointestinal, skin, and respiratory infections have been~~
10 ~~reported in people who have had recent exposure to biosolids.~~

11 ~~(c) The United States Environmental Protection Agency and a~~
12 ~~federal court of appeals have acknowledged that there is no~~
13 ~~scientific consensus on the safety of land applied sewage sludge.~~

14 ~~(d) Groundwater supplies are an invaluable resource for urban,~~
15 ~~rural, and agricultural uses throughout the state. The land~~
16 ~~application of biosolids has the potential to contaminate~~
17 ~~irreplaceable groundwater supplies.~~

18 ~~(e) Finding a reuse for sewage sludge should not produce more~~
19 ~~pollution and health risks than disposal, especially if these~~
20 ~~impacts are imposed upon a community outside of the county in~~
21 ~~which the sludge was produced~~

22 ~~(f) Congress, through the Clean Water Act, provides for local~~
23 ~~control over the use and disposal of sewage sludge as long as~~
24 ~~federal standards are met. And, according to a state appellate~~
25 ~~court case, where state or local governmental action is authorized~~
26 ~~by Congress, that state or local governmental action is not subject~~
27 ~~to the constraints of the “dormant” Commerce Clause of the~~
28 ~~United States Constitution.~~

29 ~~(g) Because of the health and environmental risks, the~~
30 ~~potential for water pollution, and the many unknowns about the~~
31 ~~content of biosolids, counties should bear the responsibility of~~
32 ~~managing the biosolids that they generate within their own~~
33 ~~jurisdictional boundaries so that no county is unfairly burdened~~
34 ~~with another county’s sewage waste.~~

35 SEC. 2. Section 40065 is added to the Public Resources
36 Code, to read:

37 40065. (a) Nothing in Section 13274 of the Water Code shall
38 prohibit the Kern County Board of Supervisors, upon a majority
39 vote, from regulating or prohibiting, by ordinance, *in a*
40 *nondiscriminatory manner*, ~~the importation of sewage sludge~~

1 ~~from another California county for application to land within the~~
2 ~~jurisdiction of the county.~~

3 ~~(b) A prohibition, if enacted pursuant to subdivision (a), shall~~
4 ~~provide an exemption for a contractual obligation to import~~
5 ~~sewage sludge for application to land that was in existence before~~
6 ~~the effective date of the prohibition. This exemption shall not~~
7 ~~apply to a renewal of a preexisting contractual obligation to~~
8 ~~import sewage sludge for application to land when the renewal~~
9 ~~occurs after the effective date of the prohibition. land application~~
10 ~~of sewage sludge, including sewage sludge imported from~~
11 ~~another California county, in the unincorporated areas of Kern~~
12 ~~County.~~

13 *(b) A prohibition, if enacted pursuant to subdivision (a), shall*
14 *provide an exemption for a land application permitted by a state*
15 *or local entity before the effective date of the prohibition. This*
16 *exemption shall not apply to a renewal of a preexisting permit*
17 *that directly regulates the land application of biosolids when the*
18 *renewal occurs after the effective date of the prohibition.*

19 (c) This section does not supersede a more stringent state or
20 federal law regarding the management of sewage sludge.

21 (d) This section shall not be construed as affecting the holding
22 in County Sanitation Dist. No. 2 of Los Angeles County v.
23 County of Kern (2005) 127 Cal. App.4th 1544.

24 *(e) For the purposes of this section, a nondiscriminatory*
25 *ordinance shall apply equally to biosolids generated within Kern*
26 *County and those imported from other California counties.*

27 SEC. 3. Section 13274 of the Water Code, as added by
28 Section 13 of Chapter 814 of the Statutes of 1997, is amended
29 and renumbered to read:

30 ~~13274.—~~

31 13275. (a) Notwithstanding any other provision of law, any
32 public water system regulated by the State Department of Health
33 Services shall have the same legal rights and remedies against a
34 responsible party, when the water supply used by that public
35 water system is contaminated, as those of a private land owner
36 whose groundwater has been contaminated.

37 (b) For purposes of this section, “responsible party” has the
38 same meaning as defined in Section 25323.5 of the Health and
39 Safety Code.

1 ~~SEC. 3.—~~

2 *SEC. 4.* The Legislature finds and declares that this act, which
3 is applicable only to Kern County, is necessary because of the
4 unique and special problems associated with the ~~importation~~
5 *“land application”* of sewage sludge ~~into~~ *in* that county. It is,
6 therefore, hereby declared that a general law within the meaning
7 of Section 16 of Article IV of the California Constitution cannot
8 be made applicable to that county and the enactment of this
9 special law is necessary for the control of sewage sludge for the
10 public good.

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